

U.S. Serial No.: 10/021,809  
Filed: October 30, 2001  
Group Art Unit: 3731  
Examiner: Uyen T. Ho  
Atty. Docket No.: 101896-276 (DEP-5241)

### REMARKS

The pending Office Action address claims 1-2, 4-10, and 15-29. Claims 1, 2, and 26-29 are withdrawn from consideration. Remaining claims 4-10 and 17-25 stand rejected. The Examiner has failed to address pending claims 15 and 16.

Applicants respectfully request reconsideration of the present application in view of the amendments set forth above and the remarks below.

#### *Claim Amendments*

Applicants cancel withdrawn claims 1-2 and 26-29. Applicants reserve the right to pursue these claims in a divisional application.

Applicants also cancel claims 4-6, 15-19, and 25.

Claim 21 is amended to include the limitations of claim 25, which is now cancelled. Claim 21 is also amended to recite that the distal end of the cannula is sloped such that the cannula has a short side and a long side, and that the opposed cut-outs are formed between the short side and the long side of the cannula. Support for this amendment can be found throughout the specification and in the drawings, for example in paragraph 0034 of the published application, and in Figure 5. No new matter is added.

Applicant also adds new claim 30, which recites a dilator for use in surgery. Claim 30 includes certain features previously recited in canceled claims 4-6, 15-19, and 25, and thus no new matter is added.

#### *Claim Objections*

The Examiner objects to claim 20 because "is funnel" in line 4 should read "is tunnel funnel." Applicant has canceled claim 20, thereby obviating the basis for this rejection.

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*Claim Rejections*

Claims 1, 2, 4-14, and 21-25 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,976,146 of Ogawa et al. Claims 17-20 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Ogawa. Applicant respectfully disagree.

Independent claim 21 requires a cannula having a distal end with a sloped configuration such that the cannula or dilator has a short side and a long side. Claim 21 also requires opposed cut-outs formed in the distal end between the short side and the long side, as shown in Figure 5. Ogawa does not teach or even suggest a cannula having such a configuration. As shown in the various figures, Ogawa discloses an operation sheath having a distal end with various shapes. In particular, the various configurations each include a distal end having an engagement element that is adapted to engage the posterior arch of a vertebra such that the distal end rests against the vertebra. None of the disclosed embodiments include a sloped configuration with opposed cut-outs formed between a short side and a long side. The claimed configuration allows the distal end to be positioned against a sloped surface of the vertebra, and tools or implants to be inserted through the cut-outs. Claim 21 therefore distinguishes over Ogawa and represents allowable subject matter. Claims 22-24 are allowable at least because they depend from an allowable base claim.

New claim 30 similarly distinguishes over Ogawa and represents allowable subject matter. Claim 30 recites a dilator having a sloped distal end defining a short side and a long side, and opposed cut-outs formed between the short side and the long side. The opposed cut-outs define a passageway adapted to receive a tool therethrough when the distal end of the elongate body is placed against a vertebra. Ogawa does not teach or even suggest such a configuration, as discussed above. In fact, in each of the various embodiments disclosed in Ogawa the distal end has a shape configured to engage an arch of the vertebra. As a result, the distal end will rest against the vertebra and thus the disclosed operation sheaths do not include any type of lateral passageway adapted to allow tools to pass therethrough when the distal end of the elongate body is placed against the vertebra, as required by independent claim 30. Accordingly, claim 30 distinguishes over Ogawa and represents allowable subject matter.

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***Conclusion***

Applicant submits that all claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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